

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3 In the matter of:

4 ELY LEARNING BRIDGE CHARTER  
5 SCHOOL

OAG FILE NO.: 13897-429

6 **FINDINGS OF FACT AND**  
7 **CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Linda Davies filed two (2) complaints with the Office of the Attorney General  
10 (“OAG”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Ely Learning  
11 Bridge Charter School Board of Directors (“Board”) alleging as follows:

12 **Allegation No. 1:** The Board failed to post meeting notices on its website at least  
13 three (3) working days prior to a meeting.

14 **Allegation No. 2:** The Board failed to maintain the requisite documentation  
15 regarding posting of meeting notices.

16 **Allegation No. 3:** The Board failed to follow posting requirements regarding  
17 meeting notices being posted at various locations, for 18 of its meetings held between April  
18 27, 2020 and August 5, 2020.

19 **Allegation No. 4:** The Board took action during meetings where a quorum was not  
20 present, or alternatively, that the Board took action with less than a quorum approving the  
21 action.

22 **Allegation No. 5:** The Board failed to keep proper minutes reflecting the  
23 identification of Board members who were present during meetings.

24 **Allegation No. 6:** The Board failed to make recordings of its meetings or its meeting  
25 minutes available to members of the public on its website.

26 The OAG has statutory enforcement powers under the OML and the authority to  
27 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
28 241.040. The OAG’s investigation of the Complaint included a review of the following: (1)

1 the Complaint filed by Ms. Davies, dated August 12, 2021, and all attachments thereto  
2 (“Initial Complaint”); (2) the response filed on behalf of the Board to the Initial Complaint;  
3 (3) the Complaint filed by Ms. Davies, dated August 30, 2021, and all attachments thereto  
4 (“Second Complaint”); (4) the response filed on behalf of the Board to the Second Complaint  
5 and all attachments thereto; and (5) The Board’s website.

6 After investigating the Complaint, the OAG determines that the Board violated the  
7 OML for failing to keep posting records as required by NRS 241.020(5) and for failing to  
8 keep proper minutes reflecting the identities of Board members present and absent during  
9 its meetings. The OAG does not find violations of the OML regarding the other allegations.

### 10 FINDINGS OF FACT

11 1. During the period at issue, the Board consisted of six (6) members, with Linda  
12 Derbidge sitting as Board Secretary and later Chair.

13 2. Attached to the Initial Complaint were eleven (11) agendas for Board  
14 meetings occurring between January 13, 2021, and August 11, 2021. Each agenda included  
15 the following “Affidavit”:

16 Affidavit: I, Linda Derbidge, on [date] by 9:00 a.m., did execute the requested  
17 distribution list and post six notices<sup>1</sup> of Learning Bridge Charter School Board  
18 of Directors Agenda in the County of White Pine, to wit:

- 19 1) [www.elylearningbridge.org](http://www.elylearningbridge.org)
- 20 2) <http://notice.nv.gov>
- 21 3) White Pine County Courthouse 801 Clark Street, Ely, NV 89301
- 22 4) Ely City Hall 501 Mill Street, Ely, NV 89301
- 23 5) United States Post Office 2600 Bristlecone Ave., Ely, NV 89301
- 24 6) Learning Bridge Charter School 1400 East 13<sup>th</sup> Street, Ely, NV 89301

25 NOTES: Any open meeting may be closed by an appropriate motion, which  
26 under NRS 241.030(1) would allow the public body to consider in private the  
27 character, alleged misconduct, professional competence, or physical or mental  
28 health of a person/employee. No action may be taken during such a closed  
meeting. Reconvene (if necessary) the open meeting from (possible) closed  
sessions for possible action/discussion regarding personnel.

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<sup>1</sup> The January 13, 2021, February 10, 2021, and March 10, 2021, meeting agendas included a seventh location where the notice was allegedly posted, namely the Public Safety Building 1785 Great Basin Blvd., Ely, NV 89301.



1 as “every day of the week except Saturday, Sunday[,] and any day declared to be a legal  
2 holiday”. NRS 241.015(7).

3 In this case, while the Complaint asserts that the Board may not be posting its  
4 meeting notices to its website at least three (3) working days prior to its meetings, the  
5 Board responded that “. . . all posting for meetings were done at least 3 working days prior  
6 to each meeting and each met the minimum public notice requirements outlined in NRS  
7 241.020(4).” Upon review of the Board’s website, the OAG further notes that it was able to  
8 locate the various meeting notices. Accordingly, the OAG does not find a violation of the  
9 OML.

10 **2. The Board violated the OML for failing to keep posting records required by**  
11 **NRS 241.020(5).**

12 The OML requires that for each of its meetings, a public body document in writing  
13 that the public body complied with the minimum public notice required and that such  
14 documentation must be prepared by every person who posted a copy of the public notice.  
15 NRS 241.020(5). Per statute, the documentation must include: (a) the date and time when  
16 the person posted the public notice; (b) the address of the location where the person posted  
17 the public notice; and (c) the name, title, and signature of the person posting the notice.  
18 NRS 241.020(5)(a)-(c). On its face, the statute requires that the record is to be prepared by  
19 the person doing the actual posting. *See id.; Nevada Open Meeting Law Manual, Section*  
20 *5.03, 44-45 (12th ed. January 2016, updated March 26, 2019).*

21 Here, the affidavits prepared on behalf of the Board by Ms. Derbidge, purportedly to  
22 seeking compliance with NRS 241.020(5), make the following statement:

23 Affidavit: I, Linda Derbidge, on [date] by 9:00 a.m., did execute the requested  
24 distribution list and post [ ] notices of Learning Bridge Charter School Board  
of Directors Agenda in the County of White Pine, to wit. . .

25 The Board proffers in its response that when Ms. Derbidge took over as the Board’s  
26 Secretary, she was informed that it was her responsibility to oversee and delegate postings.  
27 The response further notes that Ms. Derbidge signed the affidavits because “she had  
28 instructed the appropriate staff to do each of the required postings and was unaware that

1 she should change the affidavit in these instances.” Given the Board’s admission that Ms.  
2 Derbidge was not in fact the individual who made the actual posting, the OAG finds that  
3 the Board violated the OML by failing to keep documentation that reflects the name, title,  
4 and signature of the person posting the meeting notices pursuant to NRS 241.020(5).

5 Despite finding a violation, the OAG notes the Board’s position that while Ms.  
6 Derbidge did not perform the actual posting herself, the postings were done in a timely  
7 manner. The OAG does not possess evidence to the contrary. Moreover, the Board  
8 confirmed in its response that going forward, it would ensure “each individual who  
9 completes the posting will sign a separate affidavit for each posting.” The OAG believes  
10 this is an adequate remedy moving forward.

11 **3. The OAG is prohibited from providing an opinion whether the Board**  
12 **violated the OML when it allegedly failed to post agendas and notices of**  
13 **meetings in at least three separate physical locations for its meetings held**  
14 **between April 27, 2020 and August 5, 2020.**

15 Part of the Second Complaint included an allegation that the Board failed to follow  
16 the OML’s requirements for minimum posting location requirements under NRS  
17 241.020(3) with regards to the Board’s meetings held on April 27, April 29, May 6, May 19,  
18 May 20, June 1, June 2, June 3, June 9, June 17, July 7, July 8, July 14, July 21, July 22,  
19 July 29 and August 5, 2020.

20 The OAG is required to investigate and prosecute violations of the OML alleged in a  
21 complaint filed not later than 120 days after the alleged violation but is prohibited from  
22 investigating and prosecuting alleged violations where the complaint is filed more than a  
23 year after the alleged violation. NRS 241.039(2). The alleged OML violations occurred  
24 over 1 year before the Complaint was filed with the OAG. Thus, the OAG is prohibited  
25 from providing an opinion on the same.

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1 **4. The OAG is prohibited from providing an opinion whether the Board**  
2 **violated the OML by taking action with less than a quorum present at its**  
3 **meetings held on April 27, May 20, June 3, June 17, July 22 and August 5,**  
4 **2020.**

5 The Second Complaint makes additional allegations that the Board did not have a  
6 quorum present during its April 27, July 8, and July 14, 2020, meetings, but nonetheless  
7 voted to take affirmative action, in violation of NRS 241.015(1). As noted above, the OAG  
8 may investigate and prosecute violations of the OML filed more than 120 days after the  
9 alleged violation with the OAG only if the “alleged violation was not discoverable at the  
10 time that the alleged violation occurred” and if the complaint is filed not more than 1 year  
11 after the alleged violation with the OAG. NRS 241.039(2)(c). The alleged OML violations  
12 occurred over 1 year after the Complaint was filed with the OAG; accordingly, the OAG is  
13 prohibited from providing an opinion on the same.

14 **6. The Board’s action to approve the Final Budget for the 2021-2022 fiscal year**  
15 **did not violate the OML.**

16 The Second Complaint includes an allegation that the Board did not have the  
17 requisite number of Board members present during its June 2, 2021, meeting to approve  
18 the Final Budget for the 2021-2022 fiscal year. Specifically, the Complaint states that the  
19 Board is a seven-member body and thus, four (4) members would constitute a quorum.<sup>2</sup>  
20 The Complaint further alleges that during the meeting, Member Derbidge abstained from  
21 voting, with the 3 remaining members voting to approve the Final Budget. The Complaint  
22 concludes that because only 3 members affirmatively voted to approve the budget, that  
23 there were insufficient votes to take action.

24 The OML defines “action” as: (1) “A decision made by a majority of the members  
25 present, whether in person or by means of electronic communication, during a meeting of  
26 a public body”; (2) “A commitment or promise made by a majority of the members present,

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27 <sup>2</sup> “Quorum” is defined as “a simple majority of the membership of a public body or another  
28 proportion established by law.” NRS 241.015(5).

1 whether in person or by means of electronic communication, during a meeting of a public  
2 body”; (3) “If a public body may have a member who is not an elected official, an affirmative  
3 vote taken by a majority of the members present, whether in person or by means of  
4 electronic communication, during a meeting of the public body”; or (4) “If all members of a  
5 public body must be elected officials, an affirmative vote taken by a majority of all the  
6 members of the public body.” NRS 241.015(1).

7 Here, the Board is comprised of members who are not elected officials, and thus,  
8 action may be taken by an affirmative vote of a majority of the members present at the  
9 meeting. During the Board’s June 2, 2021, meeting, 4 members of the Board were present  
10 who could have voted on the matter. Thus, a quorum was present and a majority of those  
11 members voted to approve the Final Budget. Accordingly, the OAG finds no violation  
12 occurred.

13 **7. The Board failed to keep proper minutes reflecting the identities of Board**  
14 **members who were present and absent during its meetings.**

15 The OML requires public bodies to keep written minutes of each of their meetings  
16 that must include identification of “those members of the public body who were present,  
17 whether in person or by means of electronic communication, and those who were absent.”  
18 NRS 241.035(1)(b).

19 With regards to the Board’s June 2, 2021, meeting minutes, the Complaint states  
20 that the minutes only reflect four members present with one of the members leaving prior  
21 to the meeting’s adjournment. Upon review of the June 2, 2021, meeting agenda as well as  
22 the meeting minutes, the OAG notes that the Board agendized “Roll Call” as Agenda Item  
23 3. In review of the minutes thereunder, the minutes state:

24 3. Board members in attendance: Linda Derbidge, Jeremiah Peterson,  
25 Loretia Taylor and Viviana Weiland. Darren Wallace was Absent. Viviana  
26 left the meeting at 6:43.

27 While the meeting minutes related to Agenda Item 3 do not specifically note the  
28 presence or absence of Member Donna Gubler, the minutes reflect that Member Gubler

1 made and supported various motions throughout the meeting. In fact, as part of the  
2 Board's response to the Second Complaint, the Board provided notes taken by School  
3 Administrator Dr. Jerri-Lynn Williams Harper for the Board's June 2, 2021, meeting.  
4 Therein, Dr. Harper noted that Member Gubler was present and participated throughout  
5 the meeting, reflecting that Member Gubler made two nominations and two motions  
6 throughout. Accordingly, while the minutes did not specifically reference in Agenda Item  
7 3 whether Member Gubler was present, which albeit is a technical violation, it appears to  
8 the OAG that reference to Member Gubler throughout the meeting shows that she was  
9 present during the meeting and her attendance can be ascertained therefrom.<sup>3</sup>

10 **7. The OML does not require that a public body post recordings of**  
11 **its meetings nor its meeting minutes to its website.**

12 Lastly, the Second Complaint alleges that the Board is not posting its meeting  
13 minutes or meeting recordings to its website.

14 The OML provides that minutes of public meetings are public records that must be  
15 made available for inspection by the public within 30 working days after adjournment of  
16 the meeting. NRS 241.035(2). A copy of the minutes or recording must be made available  
17 to a member of the public upon request at no charge. *Id.*

18 The OAG has previously opined that the OML does not require public bodies to post  
19 copies of their minutes or recordings to the internet. *See In re: I Can Do Anything Charter*  
20 *School Board*, OAG File No. 13897-311 (January 18, 2019); *In re: Nevada System of Higher*  
21 *Education Board of Regents*, OAG File No. 13897-380 (December 8, 2020) ("While the OML  
22 requires that minutes or an audio recording of a meeting must be made available for  
23 inspection by the public within 30 working days after the adjournment of the meeting, such

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24 <sup>3</sup> In its response to the Second Complaint, the Board acknowledged that its meeting  
25 minutes for the meetings held between April 27, 2020, and July 14, 2020, failed to meet the  
26 requirements under NRS 241.035(1)(b), namely that the minutes reflect the names of  
27 Board members who are absent. These matters occurred over 1 year before the Complaint  
28 was filed with the OAG; therefore, the OAG is prohibited from providing an opinion on the  
same. Nevertheless, the Board has committed to ensuring that this failure will not occur  
for future meetings.



1 provision does not require that public bodies post copies of their minutes to the internet.”).  
2 Here, the Complaint does not allege that a member of the public requested a copy of the  
3 Board’s minutes or recording of a meeting; instead, the Complaint references a request by  
4 a member of the public for the Board to make its recordings and minutes available on its  
5 website. Accordingly, the OAG finds no violation of the OML.

## 6 SUMMARY

7 Upon investigating the present Complaint, the OAG makes findings of fact and  
8 conclusions of law that the Ely Learning Bridge Charter School Board of Directors violated  
9 the OML by failing to keep proper documentation regarding the identity of the individual  
10 making the actual posting as required under NRS 241.020(5).

11 If the Attorney General investigates a potential OML violation and makes findings  
12 of fact and conclusions of law that a public body has taken action in violation of the OML,  
13 “the public body must include an item on the next agenda posted for a meeting of the public  
14 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The  
15 public body must treat the opinion of the Attorney General as supporting material for the  
16 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board  
17 must place an item on its next meeting agenda in which it acknowledges the present  
18 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating  
19 in this matter. The Board must also include this OAG Opinion in the supporting materials  
20 for its next meeting.

21 Lastly, NRS 241.037 confers upon the OAG the power bring suit “in any court of  
22 competent jurisdiction to have an action taken by a public body declared void or for an  
23 injunction against any public body or person to require compliance with or prevent  
24 violations of [NRS 241].” NRS 241.037(1). Further, NRS 241.0365(1) provides that if a  
25 public body takes action to correct an alleged violation within 30 days of the alleged  
26 violation, the Attorney General may decide not to commence prosecution of the alleged  
27 violation if the Attorney General determines foregoing prosecution would be in the best  
28 interests of the public. Here, while the OAG finds that an OML violation has occurred, it

1 is the OAG's position that the foregoing remedies required of the Board are sufficient to  
2 address the violation.

3 Dated: January 16, 2023.

4 AARON FORD  
5 Attorney General

6 By: /s/ Rosalie Bordelove  
7 ROSALIE BORDELOVE  
8 Chief Deputy Attorney General  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16<sup>th</sup> day of January, 2023, I served the foregoing  
3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same  
4 in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**  
5 addressed as follows:

6  
7 Linda Davies  
8 

9  
10 **Certified Mail No.:**  \_\_\_\_\_

11  
12 Ely Learning Bridge Charter School Board of Directors  
13 c/o Bonnie Drinkwater, Esq.  
14 Drinkwater Eaton Law Offices  
15 5421 Kietzke Lane  
16 Reno, Nevada 89511

17  
18 **Certified Mail No.:** 7020 0640 0000 7651 9258 \_\_\_\_\_

19 /s/ Debra Turman \_\_\_\_\_  
20 An employee of the Office of the  
21 Nevada Attorney General  
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